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December 16, 2016

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Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
Attn: Donna Rawls, Paralegal
999 E. Street, NW
Washington, DC 20463

Re: MUR 7155

Dear Mr. Jordan:

On behalf of Americans United for Change ("Respondents"), we submit this letter in response to the complaint filed by the Public Interest Legal Foundation ("Complainants") on October 18, 2016 (the "Complaint"), alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Federal Election Commission ("FEC or "Commission") regulations. The Complaint presents no reason to believe that Respondents committed any violation of the Act. The Commission should accordingly dismiss the Complaint and take no further action.

The Complaint in MUR 7155 makes two allegations against Respondents:

First, it claims that Respondents coordinated voter registration and get-out-the-vote drives with Hillary for America ("HFA") and the Democratic National Committee ("DNC"), "Voces de la Frontera Action and other unknown groups" in violation of 11 C.F.R. § 114.4 (2016)¹. The sole sources for this allegation are press releases issued by Respondents and Voces de la Frontera Action, which describe programs contemplated by the groups.² In fact, these programs were never carried out by Respondents.³ The proposed plan was not executed, and thus could not have been coordinated with HFA or the DNC as the Complaint alleges.

Second, the Complaint makes a sweeping and unsupported claim that "all public communications....done by Americans United for Change...were done at or with the direction, approval, suggestion, or after material discussion regarding the timing, content, and audience of the communications, of the DNC and Hillary for America campaign."⁴ Yet the Complaint

¹ Compl. at 2.

² Compl. Ex. A, B.

³ Affidavit of Americans United for Change President Brad Woodhouse, Attachment A.

⁴ Compl. at 3.

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Attn: Donna Rawls, Paralegal
MUR 7155
Page 2

provides no example of any public communication issued by Respondents, let alone one that was coordinated with the DNC or HFA.

The Complaint fails to present an allegation of prohibited coordination by Respondents and Respondents categorically deny that any such coordination occurred. A public communication must satisfy a three-prong test to be considered a coordinated communication under the Act: it must (1) be paid for by a person other than a candidate, authorized committee or political party committee with which it is coordinated; (2) satisfy one or more content standards; and (3) satisfy one of several conduct standards.⁵

Yet the Complaint identifies no communication that would meet the content standard. Regarding the voter registration and get-out-the-vote drives allegedly undertaken by Respondents and Voces de la Frontera Action, the Complaint points to no communication that was distributed by either group, except for the press releases at Exhibits A and B. Nor does it present any additional conduct by Respondents that would have pertained to these activities, had they indeed occurred.

Regarding the operation of the "Donald Ducks" mascot, the Complaint similarly fails to point to any public communication distributed by Respondents in relation to the mascot. The Complaint includes a news article discussing Respondent's operation of the mascot, but no facts suggest any communication was distributed by Respondents in relation to this effort. Moreover, nothing about the mascot or related activity constitutes a "public communication" under the Act. An individual wearing a duck costume, holding a hand-held sign with statements such as "Donald Ducks Releasing His Tax Returns" is not a "public communication" under the Act. This activity is clearly not a communication made via broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank.

If the Commission found that this activity did constitute a "public communication" because it was "general public political advertising," that finding would have drastic implications for the scope of the Commission's disclaimer regulations. The Act requires disclaimers for "public communications" that expressly advocate the election or defeat of a clearly identified candidate.⁶ There is no monetary threshold below which a public communication does not need a disclaimer. If the Commission ruled that a single sign constituted a "public communication," that would require every individual political sign expressly advocating for or against a candidate at a protest or political rally, even if hand-made, to include a disclaimer in a text box noting who paid for it, and for independent activity the inclusion of a street address, telephone number or website URL and a statement that the sign was not coordinated. This result is nonsensical and unenforceable.

⁵ 11 C.F.R. § 109.21.

⁶ See 11 C.F.R. § 110.11(a)(2).

Attn: Donna Rawls, Paralegal
MUR 7155
Page 3

Finally, Complainants also fail to establish that the payment prong has been satisfied. No facts are provided in the Complaint to suggest that Respondents incurred any expense to create any public communication. The only references to a "budget" in the Complaint are in reference to proposed voter registration drives and other GOTV efforts, which did not occur.⁷ Furthermore, Respondents have declared under penalty of perjury that they did not pay for most of the activity referenced in the Complaint and exhibits. Specifically, Respondents have attested that they did not pay for any expenses associated with a "Donald Ducks" costume, signs carried by the mascot, or travel costs for individuals working on the "Donald Ducks" effort.⁸ Respondents also did not pay anyone to protest at a Trump rally in Chicago on March 11, 2016,⁹ nor did they carry out or incur any expenses for a "Fall 2016 Plan to Motivate Voters" with Voces de la Frontera Action.¹⁰

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act.¹¹ For claims of coordination, the Commission requires an even stronger showing: that Complainant provide "probative information of coordination."¹² The Complaint fails to meet either standard with respect to Respondents. Accordingly, we request the Commission find no reason to believe Respondents committed any violation of the Act and dismiss this matter immediately.

We appreciate the Commission's consideration of this response.

Very truly yours,



Marc E. Elias
Ezra W. Reese
Katherine T. LaBeau
Counsel to Respondents

⁷ Compl. Ex. A, G, *see also* Affidavit, *supra* note 3.

⁸ *See* Affidavit of Americans United for Change President Brad Woodhouse, Attachment A. *Contra* Compl., Ex. D.

⁹ *See* Affidavit of Americans United for Change President Brad Woodhouse, Attachment A. *Contra* Compl. at page 3; Ex. C.

¹⁰ *See* Affidavit of Americans United for Change President Brad Woodhouse, Attachment A. *Contra* Compl., Exs. A and B.

¹¹ 11 C.F.R. § 109.21(a).

¹² Factual and Legal Analysis, Matter Under Review 5754 (MoveOn.org Voter Fund), at 3-4.

ATTACHMENT A

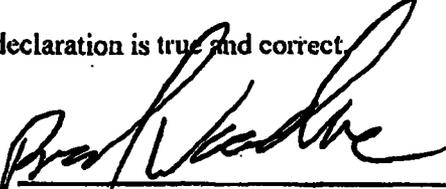
BEFORE THE
FEDERAL ELECTION COMMISSION

_____)
IN RE)
_____)
Americans United for Change, *et al.*) MUR 7155
_____)
_____)

Declaration of Brad Woodhouse

1. I am the President of the organization Americans United for Change ("AUFC").
2. AUFC did not pay for any expenses associated with a "Donald Ducks" costume, signs carried by the mascot, or travel costs for individuals working on the "Donald Ducks" effort. AUFC's sole expenses associated with the effort consisted of staff time to prepare and issue press releases about the effort over the internet, along with unpaid Twitter messaging.
3. AUFC did not pay anyone to protest at a Trump rally in Chicago on March 11, 2016 (Exhibit C of the Complaint).
4. AUFC did not carry out, and incurred no expenses for, a "Fall 2016 Plan to Motivate Voters" with Voces de la Frontera Action (Exhibits A and B of the Complaint).
5. I am over 21 years of age, of sound mind, and I have personal knowledge of the facts stated above.

I declare under penalty of perjury that this declaration is true and correct.



Brad Woodhouse

12/15/16

Date